



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2021-0673]

RIN 1625-AA08

Special Local Regulation; Swim Around Charleston, Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation on the waters of the Wando River, Cooper River, Charleston Harbor, and Ashley River in Charleston, SC. This action is necessary to provide for the safety of life on navigable waters during the Swim Around Charleston. This rulemaking would restrict persons and vessels from entering certain waters of the Wando River, Cooper River, Charleston Harbor, and Ashley River, unless authorized by Sector Charleston Captain of the Port or a designated representative.

DATES: This rule is affective from 10 a.m. until 4 p.m., on October 31, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0673 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Chad Ray, Sector Charleston Waterways Management Division, Coast Guard; telephone (843) 740-3184, e-mail Chad.L.Ray@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The event already has established dates in 33 CFR 100.704, Table to § 100.704, Line No. 9, and typically takes place one Saturday or Sunday during the last two weeks of September or the first two weeks of October. However, this year the event will take place on October 31, 2021. The Coast Guard must establish a temporary final rule for this year’s event because a Notice of Enforcement cannot be used to enforce a rule this far outside the dates approved in the Federal Register. We must establish this special local regulation by October 31, 2021 in order to protect the public from the hazards associated with the Swim Around Charleston event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because the potential safety hazards associated with the Swim Around Charleston taking place on October 31, 2021.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port Charleston (COTP) has determined that potential hazards associated with the Swim Around Charleston event presents a safety concern for anyone in the vicinity of the regulated area during the event. This rule is needed to protect participants, spectators, and the general public in the navigable waters within the regulated area during the Swim Around Charleston event.

IV. Discussion of the Rule

This rule establishes a special local regulation from 10:00 a.m. until 4:00 p.m., on October 31, 2021. The special local regulation will cover certain navigable waters on the Wando River, Cooper River, Charleston Harbor, and Ashley River in Charleston, South Carolina beginning at Remleys Point in Mt. Pleasant, proceeding across Charleston Harbor continuing up the Ashley River to its conclusion just before the Westmoreland Bridge, I-526. The duration of the special local regulation is intended to ensure the safety of participants, spectators, vessels and these navigable waters before, during, and after the scheduled event. No vessel or person will be permitted to enter the regulated area without obtaining permission from Sector Charleston COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on: (1) non-participant persons and vessels may enter, transit through, anchor in, or remain within the regulated area during the enforcement periods if authorized by Sector Charleston COTP or a designated representative; (2) vessels not able to enter, transit through, anchor in, or remain within the regulated area without authorization from Sector Charleston COTP or a designated representative may operate in the surrounding areas during the enforcement period; (3) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Broadcast Notice to Mariners; and (4) the regulated area will impact small designated areas of Wando River, Cooper River, Charleston Harbor, and Ashley River for only 4 hours and thus is limited in time and scope.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule a special local regulation lasting 6 hours. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, and Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.T799-0084 to read as follows:

§ 100.T799-0084 Special Local Regulation; Swim Around Charleston, Wando River, Cooper River, Charleston Harbor, and Ashley River; Charleston, SC.

(a) Location. The following area is a moving safety zone: All waters 50 yards in front of the lead safety vessel preceding the first race participants, 50 yards behind the safety vessel trailing the last race participants, and at all times extend 100 yards on either side of safety vessels. The Swim Around Charleston swimming race consists of a 12 mile course that starts at Remley's Point on the Wando River in approximate position 32°48'49"N, 79°54'27"W, crosses the main shipping channel under the main span of the Ravenel Bridge, and finishes at the I-526 bridge and boat landing on the Ashley River in approximate position 32°50'14"N, 80°01'23"W. All coordinates are North American Datum 1983.

(b) Definition. The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Sector Charleston COTP in the enforcement of the regulated areas.

(c) Regulations. (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Sector Charleston COTP or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Sector Charleston COTP by telephone at 843-740-7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Sector Charleston COTP or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Sector Charleston COTP or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) Enforcement period. This section will be enforced from 10 a.m. until 4 p.m., on October 31, 2021.

Dated: October 20, 2021

J. D. Cole, Captain,
U.S. Coast Guard,
Captain of the Port Charleston.

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